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Attorney for Defendants
6 FACEBOOK, INC. and
MARK ZUCKERBERG
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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 CHILDREN’S HEALTH DEFENSE,
13 Plaintiff,
14 v.
15 FACEBOOK, INC., ET AL.,
16 Defendants.
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Case No. 3:20-cv-05787-SI

**DECLARATION OF ARI
HOLTZBLATT IN SUPPORT OF
DEFENDANTS’ OPPOSITION TO
PLAINTIFF’S REQUEST FOR CASE
MANAGEMENT AND SUBSTITUTED
SERVICE ORDERS**

1 I, Ari Holtzblatt, declare as follows:

2 1. I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP. I represent Defendants
3 Facebook, Inc. and Mark Zuckerberg in the above-captioned action.

4 2. At 12:23 EST on September 9, 2020, Plaintiff's counsel informed Defendants that
5 Plaintiff would only consent to a stipulation under Local Rule 6-2 providing Plaintiff with 60 days to
6 respond to any Rule 12 motions. Ex. A.

7 3. About two hours later, I participated in a telephone call with counsel for Plaintiff
8 regarding the briefing schedule on any Rule 12 motions in this matter and the timing of a meet and
9 confer between the parties concerning, among other things, the preservation of electronically stored
10 information and Facebook's application of its upcoming amendment to Section 3.2 of its Terms of
11 Service. Regarding the briefing schedule, I initially explained that Defendants did not consent to the
12 requested 60-days for Plaintiff's Opposition and instead wished to maintain the 45-day extension
13 previously agreed upon.

14 4. Plaintiff's counsel noted that, while he had previously agreed to a 45-day extension,
15 he now requested the additional time in light of: (1) Defendants' request for 30 days to file replies in
16 support of their Rule 12 motions; (2) the fact that he would likely be responding to multiple motions;
17 and (3) the intervening holidays and case management conference.

18 5. While Defendants preferred the original 45-day extension, I ultimately consented to
19 Plaintiff's request for 60 days in the interest of reaching an agreement and avoiding unnecessary
20 motion practice before this Court.

21 6. On the September 9 call, Plaintiff's counsel also requested that lead counsel for the
22 parties meet and confer as required under Rule 26(f) on September 16, 2020—over two months
23 before the case management conference scheduled for November 20, 2020.

24 7. I explained that I would need to confer with my clients regarding the date of the meet
25 and confer but that it was unlikely that Defendants would be prepared for the Rule 26(f) meet and
26 confer so far in advance of the case management conference.

27 8. Plaintiff's counsel also raised Facebook's upcoming amendment to Section 3.2 of
28 Facebook's Terms of Service. That amendment, effective October 1, 2020, will provide that

1 Facebook “can remove or restrict access to your content, services, or information if we determine
2 that doing so is reasonably necessary to avoid or mitigate adverse legal or regulatory impacts to
3 Facebook.” *Terms of Service*, available at <https://www.facebook.com/legal/terms/preview>.

4 9. I asked Plaintiff’s counsel to explain the relevance of the upcoming amendment to
5 Section 3.2 of Facebook’s Terms of Service, and he stated that he was concerned about potential
6 spoliation implications if Facebook were to apply the rule to Children’s Health Defense. I further
7 explained that I would need to consult with my clients before I could agree to a further meeting
8 regarding the upcoming amendment to Section 3.2.

9 10. Following the telephone call, at 3:27 p.m. EST, I sent Plaintiff’s counsel, via email,
10 revised stipulations reflecting the additional two weeks requested to oppose any Rule 12 motions.
11 *See* Ex. B. The revised stipulations did not address electronic service or any meet-and-confer
12 regarding Rule 26(f) issues or the upcoming amendment to Section 3.2.

13 11. Plaintiff’s counsel responded about an hour later stating: “You have my consent to
14 file these Stipulations and [Proposed] Order.” Ex. C. Plaintiff’s counsel attached the stipulations
15 in PDF format to which counsel had consented. *Id.* Plaintiff’s counsel’s email “[s]eparately”
16 asked: (1) “to confirm whether Wilmer Hale will or will not accept service” on behalf of Mark
17 Zuckerberg; (2) whether Defense counsel would accept electronic service of several attached
18 orders; and (3) “to confirm the September 16 phone call or suggest another day / time you would
19 prefer for the Section 3.2 discussion and another day / time for the initial ESI-related discussion.”
20 Ex. C.

21 12. I responded via email shortly after 5:00 p.m. EST informing Plaintiff’s counsel that
22 Defendants would file the agreed-upon stipulations and explaining that I would get back to him
23 regarding the requests to accept electronic service. I also made clear that “[w]e did not agree to
24 calendar a call regarding ESI-retention protocols at this time” and that I would have to confer with
25 my clients before “get[ting] back to [him] about the two phone conversations” requested. Ex. D.

26 13. Plaintiff’s counsel did not respond to my 5:00 p.m. email. My office filed the
27 agreed-upon stipulations about two hours later, shortly before 7:00 p.m. EST.
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1 14. I subsequently conferred with my clients regarding accepting electronic service for
2 Mark Zuckerberg. On the evening of September 10, 2020, I emailed Plaintiff's counsel informing
3 him that my firm agreed to accept substitute electronic service on behalf of Mr. Zuckerberg and to
4 accept electronic service of the orders attached to Plaintiff's counsel's previous email. Ex. E.

5 15. On September 14, 2020, I emailed Plaintiff's counsel to ask Plaintiff to "explain
6 more specifically" Plaintiff's "concerns" regarding the update to Section 3.2 of Facebook's Terms
7 of Service and, in particular, "why [Plaintiff] believe[s] CHD could run afoul of the new policy or
8 why CHD otherwise fears that Facebook is likely to enforce this particular policy against CHD."
9 Ex. F.

10 16. Plaintiff's counsel responded on September 23, 2020. In a letter, counsel stated that
11 he believed application of amended Section 3.2 of Facebook's Terms of Service would "constitute
12 unlawful retaliation" against CHD and potentially implicate Facebook's retention of ESI. Ex. G,
13 at 11, 13. The letter did not explain why CHD believes it could run afoul of the new policy or
14 why CHD fears that Facebook is likely to enforce the new policy against CHD. *Id.*

15 17. To my knowledge, my firm has no relationship with Science Feedback.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on this 24th day of September 2020 in Washington, D.C.

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19 By: /s/ Ari Holtzblatt
20 Ari Holtzblatt
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